

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND STROBEL,

No. C 07-4448 JSW (PR)

Petitioner,

**ORDER OF DISMISSAL; GRANTING  
LEAVE TO PROCEED IN FORMA  
PAUPERIS**

v.

WARDEN, CALIFORNIA MEN'S  
COLONY,

(Docket No. 2)

Respondent.

Petitioner, a prisoner of the State of California, currently incarcerated at the California Men's Colony located in San Luis Obispo, California, filed this habeas corpus action pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state conviction or detention. Petitioner has also filed a motion to proceed *in forma pauperis* (docket no. 2) that is now GRANTED (docket no. 2)

The petition is now before the Court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases. However, in the petition, Petitioner clearly states that he has not exhausted any of his claims in the California Supreme Court in that he did not appeal the plea agreement and that he did not file any previous "petitions, applications or motions" with respect to this conviction in any court, state or federal[.]

**DISCUSSION**

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

1 A district court shall "award the writ or issue an order directing the respondent to  
2 show cause why the writ should not be granted, unless it appears from the application that  
3 the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary  
4 dismissal is appropriate only where the allegations in the petition are vague or conclusory,  
5 palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d  
6 490, 491 (9th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).


7 B. Exhaustion

8 A prisoner in state custody who wishes to challenge either the fact or length of his  
9 confinement by filing a federal petition for writ of habeas corpus must first exhaust state  
10 judicial remedies, either on direct appeal or through collateral proceedings, by presenting  
11 the highest state court available with a fair opportunity to rule on the merits of each and  
12 every issue he seeks to raise in federal court. *See* 28 U.S.C. § 2254(b),(c); *Granberry v.*  
13 *Greer*, 481 U.S. 129, 133-34 (1987). As Petitioner has not presented any of his claims to  
14 the highest state court, he has not exhausted his state court remedies. As such, the  
15 petition must be dismissed. *See Rose v. Lundy*, 455 U.S. 509, 510 (1982), *Raspberry v.*  
16 *Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (declining to extend the rule in *Rhines v.*  
17 *Webber*, 125 S. Ct. 1528, 1535 (2005) to completely unexhausted petitions and finding  
18 that the district court must dismiss such a petition based on *Jimenez v. Rice*, 276 F.3d 478,  
19 481 (9th Cir. 2001)).

20 A dismissal solely for failure to exhaust is not a bar to Petitioner's returning to  
21 federal court after exhausting available state remedies. *See Trimble v. City of Santa Rosa*,  
22 49 F.3d 583, 586 (9th Cir. 1995). Accordingly, this petition is DISMISSED without  
23 prejudice to Petitioner's filing a new federal habeas petition once he has exhausted state  
24 remedies by presenting his claims to the highest state court. The Clerk shall enter  
25 judgment and close the file.

26 IT IS SO ORDERED.

27 DATED: September 5, 2007

28   
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JEFFREY S. WHITE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND MICHAEL STROBEL,  
Plaintiff,

Case Number: CV07-04448 JSW

**CERTIFICATE OF SERVICE**

v.

CALIFORNIA MENS COLONY STATE  
PRISON et al,

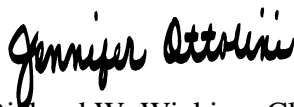
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 5, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Raymond Michael Strobel  
F68241  
California Mens Colony State Prison  
P.O. Box 8101  
San Luis Obispo, CA 93409

Dated: September 5, 2007

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk